

APPEAL NO. 032377
FILED OCTOBER 20, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 11, 2003. The hearing officer determined that the respondent (claimant) is not entitled to supplemental income benefits (SIBs) for the fourth compensable quarter, but is entitled to SIBs for the fifth quarter. The appellant (carrier) appeals the fifth quarter entitlement determination. The claimant urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

Section 408.142 provides that an employee continues to be entitled to SIBs after the first compensable quarter if the employee: (1) has not returned to work or has earned less than 80% of the employee's average weekly wage as a direct result of the impairment; and (2) has in good faith sought employment commensurate with her ability to work. The carrier asserts that the hearing officer erred in making findings favorable to the claimant on both the direct result and good faith prongs of Section 408.142.

A finding of "direct result" is sufficiently supported by evidence that an injured employee sustained an injury with lasting effects and could not reasonably perform the type of work being done at the time of the injury. Texas Workers' Compensation Commission Appeal No. 950376, decided April 26, 1995; Texas Workers' Compensation Commission Appeal No. 950771, decided June 29, 1995. In order to satisfy the direct result requirement, one only need prove that the unemployment or underemployment was a direct result of the compensable injury. See Texas Workers' Compensation Commission Appeal No. 001786, decided September 13, 2000. Nothing in our review of the record indicates that the hearing officer's direct result finding is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(5) (Rule 130.102(d)(5)) provides, in pertinent part, that an injured employee has made the required good faith effort if the employee "has provided sufficient documentation as described in subsection (e) of this section to show that he or she has made a good faith effort to obtain employment." Rule 130.102(e) lists a number of factors which may be considered in determining whether a good faith effort was made including the number and types of jobs sought, the existence of applications or resumes to document the job search efforts, any job search plan, and the amount of time spent in attempting to find employment. Contrary to the carrier's incorrect interpretation of Texas Workers' Compensation Appeal No. 931160 decided February 1, 1994, there is no requirement to document job searches for the prior SIBs quarter in order to be entitled to SIBs for the

subsequent quarter. Nor, as the carrier argues on appeal, is there requirement that a claimant must document more than one job search effort per week. However, we note that in the present case, the claimant documented more than one job search effort during each week of the qualifying period as calculated on the SIBs application. Whether the claimant's job search efforts were made in good faith was a factual determination for the hearing officer to resolve. The hearing officer found for the claimant on the good faith issue and concluded that she is entitled to SIBS for the fifth quarter. We perceive no reversible error in the hearing officer's decision. Cain, supra.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TRANSCONTINENTAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Chris Cowan
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge